

## **REMARKS**

Claim 1-28 are pending in the present application, and Applicant wishes to thank the Examiner for agreeing with Applicant's previous distinctions and for withdrawing all previous rejections. However, the present Office Action has continued to reject all claims 1-28 on new grounds. Specifically, the Office Action stated that "In view of the Appeal Brief ... prosecution is hereby reopened." Applicant would like to point out, however, that no new arguments were presented in the Appeal Brief. Instead, the Appeal Brief merely repeated Applicant's previous arguments.

### **Rejections Under 35 U.S.C. § 101**

The present Office Action has, for the first time, asserted rejections under 35 U.S.C. § 101. Specifically, the Office Action has rejected claims 17-20 under 35 U.S.C. § 101, as allegedly being non-statutory. Applicant would be agreeable to an Examiner's amendment to amend each of the "logic" elements to precede each "logic" term with a modifier of "computer" or "semiconductor" (such that the elements would read "computer logic ..." or "semiconductor logic ..."). However, Applicant has not made any such amendment herein, as Applicant believes the claims (in their present form) are fully compliant with the statutory requirements of 35 U.S.C. § 101. Further, Applicant does not wish to amend the claims in a way that may lead to some other objection or rejection. Therefore, Applicant solicits the Examiner's recommendation on this. Again, Applicant believes the current claims are in good and proper form. Indeed, the U.S. Patent & Trademark Office has issued numerous patents with this very "logic" claim language (see e.g., U.S. patent 7,296,283 – issued on Nov. 13, 2007: claim 1 defining

"logic to authorize ..."). The undersigned sees not relevant difference (from a 35 U.C.C. § 101 perspective) between the claim language issued in that patent and the claim language at issue in this application. In accordance with the Administrative Procedures Act, the U.S. Patent Office (as an administrative agency) cannot act in an arbitrary and capricious manner, and must treat all Applicants equally. The rejection of claims 17-20 in this application is inconsistent with such a policy.

Furthermore, Applicant would like the Examiner to clarify why this rejection has not been made previously. As these claims have never been amended since their original filing with this application, Applicant is confused as to why this rejection is just now being raised for the first time. As the statutory language of 35 U.S.C. § 101 has not changed, Applicant would like to know if the Patent Office's construction of this statutory provision has changed, or if the initial examination of these claims was not conducted in accordance with MPEP 707.07(g) (*i.e.*, "Piecemeal examination should be avoided as much as possible. The examiner should ordinarily reject each claim on all valid ground available ...")

#### ***Independent claims 1, 17, and 21***

The present application contains three independent claims: claims 1, 17, and 21. The Office Action has rejected each of these claims under 35 U.S.C. § 103(a) as allegedly unpatentable over the combination of U.S. patent 6,092,196 to Reiche in view of U.S. published application 2002/0083178 to Brothers. For at least the following reasons, Applicant disagrees.

Again, and as an initial matter, Applicant notes that the presently pending claims have not been amended during the prosecution of this application, and the present rejections are based on newly cited art. It therefore appears that the initial search and examination was not fully conducted in accordance with MPEP 904.02 et seq.

With regard to independent claim 1, claim 1 recites:

1. A method for authenticating a Web session comprising:  
receiving a user ID; computing a message digest of the user ID;  
computing an expiration timestamp for the session;  
***selecting an index number;***  
combining the message digest and expiration timestamp;  
***accessing an encryption key using the index number;***  
***encrypting the combined message using the accessed***  
***encryption key;*** and  
***converting the encrypted message into an ASCII string.***

(*Emphasis added.*) Applicant respectfully submits that claim 1 patently defines over the cited art for at least the reason that the cited art fails to disclose the features emphasized above.

The undersigned submits that there are a number of distinctions in the embodiment of claim 1, but several features are particularly distinctive over the cited art. In addition, the undersigned respectfully submits that the Office Action has taken an overly expansive view of certain claim features in forming the rejection.

To begin, the Office Action admits that Reiche does not teach either: "selecting an index number" or "accessing an encryption key using the index number." However, the Office Action DOES allege that Reiche teaches encrypting the combined message using an encryption key (citing col. 10, lines 21-23). This rejection, however, ignores an expressly claimed feature. In this regard, if Reiche doesn't disclose accessing an encryption key using the index number, then Reiche CANNOT disclose "encrypting the

combined message **using the accessed encryption key.**" Indeed, the cited portion of Reiche (col. 10, lines 21-23) specifically stated that the encryption is performed "using a simple private key encryption algorithm." Consequently, Reiche actually teaches away from a system that provides the security offered by the authentication method of claim 1. For at least this reason, the rejection of claim 1 is deficient and should be withdrawn.

As noted above, the Office Action cites paragraph [0104] of Brothers for disclosing the claimed features of "selecting an index number" and "accessing an encryption key using the index number." Applicant respectfully disagrees. In fact, this cited portion of Brothers teaches:

[0104] The memory 44 can store an operating system that permits the processor 42 to communicate with the memory 44, communication interface unit 46, the input device 48, the output device 50, and the data storage unit 26, via the bus 52. The memory 44 stores various program modules containing computer code executed by the processor 42 to perform various functions in coordination with the operating system. More specifically, the memory 44 stores a secure URL generator module, an access right enforcer module, a secure caching module, a communication module, and optionally a user authentication module. The memory 44 also stores a secure resource key database that includes key data and resource access right data. Furthermore, the memory 44 can store user authentication data including username/password data in which case the user authentication module performs the functions of the session layer in the ISO/OSI model IEEE specifications. The secure URL generator module is executed in response to a request signal from the WAD 12 requesting a web page document. The request signal can be initially handled by the communication module that manages reception and transmission of signals over the network 18 in coordination with the operating system. The secure URL generator module is executed by the processor 42 to retrieve the requested web page document, and to find any URL(s) within the web page document. **The secure URL generator module retrieves key data and resource access right data for the URL(s) from the secure resource key database. The secure URL generator module secures the resource access right data using the key data.** If more than one key is used in the system 10, the secure URL generator module can also append key index data indicating the key to be used by the RDS 16 to verify a request to access the resource from the WAD 12. The secure URL generator module combines the resource

access right data with its corresponding URL in the web page document. The secure URL generator module calls the communication module that handles transmission of the web page document having URL(s) with resource access right data, to the WAD 12. The access right enforcer module is launched by processor 42 upon receiving a resource request signal from the RDS 16. The access right enforcer module determines whether the RDS 16 is authorized to receive the requested resource. If so, the access right enforcer module calls the secure caching module that retrieves the resource from the data storage unit 26 and retrieves key data corresponding to the RDS requesting the resource. ***The secure caching module encodes the resource with the key data, and calls the communication module to transmit the encrypted resource to the requesting RDS.*** The communication module generates a signal including the encrypted resource and transmits such encrypted resource to the communication interface unit 46 for transmission to the RDS 16. The input device 48 and output device 50 can provide a graphical user interface (GUI) in connection with a server program (not shown) that permits an operator of the web server 44 to perform administrative tasks such as loading or updating the operating system and various program modules, web page document(s), data, and resource(s) stored in the memory 44 and the data storage unit 26.

*(Emphasis added).*

First, Applicant notes that Brothers is not directed to authenticating a Web session, and as such is nonanalogous art to the present application and the system of Reiche. Further, as emphasized above in paragraph [0104], Brothers does not appear to teach “accessing an encryption key ***using the index number.***” Instead, Brothers only relevantly teaches that “secure URL generator module secures the resource access right data using the key data.” It does not appear to teach accessing an encryption key by using a selected index number.

For at least the foregoing reasons, even if Reiche and Brothers could be properly combined, the resulting combination does not teach all of the claimed features and limitations of claim 1. Consequently, claim 1 patently defines over the combination of

Reiche and Brothers. For at least this reason, the rejection of claim 1 should be withdrawn.

As a separate and independent basis for the patentability of claim 1, Applicant submits that the combination of Reiche and Brothers is improper. In this regard, the Office Action combined selected teachings of Brothers with Reiche to reject claim 1 on the solely expressed basis that "it would have been obvious ... ***because it would increase security because using a different key for each session makes the same log in information appear different for each session, making it more difficult to break the encryption scheme or perform a replay attack.***" (see e.g., Office Action, pp. 4-5). The rationale (or motivation) for the combination, however, was not derived from the prior art itself, but rather from the Examiner's subjective viewpoint of a perceived benefit that would result IF the combination were made.

This rationale is both incomplete and improper in view of the established standards for rejections under 35 U.S.C. § 103.

In this regard, the MPEP section 2141 states:

Office policy has consistently been to follow *Graham v. John Deere Co.* in the consideration and determination of obviousness under 35 U.S.C. 103. As quoted above, the four factual inquiries enunciated therein as a background for determining obviousness are briefly as follows:

- (A) Determining of the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations.

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## BASIC CONSIDERATIONS WHICH APPLY TO OBVIOUSNESS REJECTIONS

When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention and
- (D) Reasonable expectation of success is the standard with which obviousness is determined.

Hodosh v. Block Drug Co., Inc., 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).

The foregoing approach to obviousness determinations was recently confirmed by the United States Supreme Court decision in *KSR INTERNATIONAL CO. V. TELEFLEX INC. ET AL.* 550 U.S. \_\_\_\_ (2007)(No. 04-1350, slip opinion, p. 2), where the Court stated:

In *Graham v. John Deere Co. of Kansas City*, 383 U. S. 1 (1966), the Court set out a framework for applying the statutory language of §103, language itself based on the logic of the earlier decision in *Hotchkiss v. Greenwood*, 11 How. 248 (1851), and its progeny. See 383 U. S., at 15–17. The analysis is objective:

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” *Id.*, at 17–18.

Simply stated, the Office Action has failed to at least (1) ascertain the differences between and prior art and the claims in issue; and (2) resolve the level of ordinary skill in the art. Furthermore, the alleged rationale for combining the two references embodies clear and improper subjective hindsight rationale. Furthermore, the two cited

references actually teach away from such a combination. In this regard, Reiche specifically teaches “using a simple private key encryption algorithm” (col. 10, lines 22-23) and Brothers is not even directed to Web session authentication. For at least these additional reasons, Applicant submits that the rejections of claim 1 is improper and should be withdrawn.

With regard to independent claims 17 and 21, those claims are defined by elements that, in all relevant respect, parallel the defining elements of claim 1. Indeed, the Office Action applied the same portions of Reiche (col. 10, lines 14-23) and Brothers (paragraph [0104]) as teaching the claimed features of claims 17 and 21, as were applied to the rejection of claim 1. Furthermore, the Office Action stated nothing additional about the motivation for combining Reiche and Brothers, with respect to claims 17 and 21. Therefore, it is assumed that the rationale for the combination is the same as that advanced in connection with claim 1. Therefore, Applicant submits that the rejections of claims 17 and 21 should be withdrawn for the same reasons as the rejection of claim 1.

### **Dependent Claims**

Claims 2-16, 18-20, and 22-28 depend from independent claims 1, 17, and 21, respectively and patently define over the cited art for at least the same reasons that these claims contain all limitations of the base claims from which they depend.



### **AUTHORIZATION TO DEBIT ACCOUNT**

It is believed that no extensions of time or fees for net addition of claims are required, beyond those which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Company's deposit account no. 08-2025.

Respectfully submitted,

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